



THIRD JUDICIAL CIRCUIT  
OF MICHIGAN

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Mr. Cobin R. Davis  
Supreme Court Clerk  
PO Box 30052  
925 W. Ottawa St.  
Lansing, MI 48909



Re: Admin File No. 2012-03  
Propose Adoption of Rule 1.111 and Rule 8.127 of the Michigan Court  
Rules (Foreign Language Interpreters)

Dear Mr. Davis,

Below are the comments of the Third Circuit Court with respect the proposed adoption of the rules noted above.

1. Definition of "Certified foreign language interpreter."

As proposed, the definition of "Certified foreign language interpreter," found in proposed Rule 1.111(A)(2) (a) and (b), is one who has "(a) passed a foreign language interpreter test administered by the State Court Administrative Office [SCAO] or a similar state or federal test approved by the state court administrator," and "(b) has met all the requirements established by the state court administrator for this interpreter classification."

In order to broaden the pool of persons available for interpreting to the broadest possible base, the Court believes that, if a person can demonstrate that he or she has passed foreign language interpreter test administered by a state or federal agency then that person should be deemed to have satisfied subsection (a), without further evaluation by SCAO. Because of the Court's own positive experience in using foreign language interpreters tested by the federal courts, the Court does not believe that further review of the qualifications of interpreters is necessary if the person has already passed a foreign language test administered by a state or federal agency. Similarly, if the person can

demonstrate meeting the requirements for foreign language interpreters set by other state or federal agencies, this should be deemed to have met the requirements of subsection (b).

This approach would also have the beneficial effect of streamlining the process of certifying foreign language interpreters.

The Court recommends changing the language now proposed as follows:

"(2) "Certified foreign language interpreter" means a person who has:

(a) passed a foreign language interpreter test administered by the State Court Administrative Office or a similar state or federal test,

(b) met all the requirements established by the state court administrator for this interpreter classification, or similar state or federal agency, and

..."

## 2. Alternatives to Subsection (B).

With the caveat expressed below, the Court recommends adoption of Alternative A for Proposed Rule 1.111, subsection (B). Alternative A more closely comports with existing Court practice and appears to give judges more discretion than Alternative B. Additionally, Alternative B's scope is too expansive since it extends not only to court proceedings, but to court operations as well. Alternative C, in contrast, is too limiting since it applies only to proceedings where a person is indigent.

## 3. Subsection (B)(1) - Alternative A

The last sentence of Subsection (B)(1) - Alternative A, provided for the appointment of a foreign language interpreter "in a civil or criminal case or court proceeding."

This provision may be viewed as excluding the appointment of foreign language interpreters in cases that may not be viewed as entirely civil or criminal cases, such as juvenile cases. To avoid any ambiguity, the Court recommends the deletion of "civil or criminal" from the last sentence in of Subsection (B)(1) - Alternative A

## 4. Subsection (E).

Subsection (E) addresses conflicts of interest. The first sentence of this proposed subsection states, in pertinent part, "The court should use all reasonable efforts to avoid potential conflicts of interest when considering appointing a person as a foreign language interpreter ..."

The Court recommends replacing "should" with "shall," and the elimination of the phrase "use all reasonable efforts to" in the above portion of Subsection (E), so that this clause would read, "The court shall avoid potential conflicts of interest when considering

appointing a person as a foreign language interpreter ...”

While “should” ordinarily implies a duty, the duty is “usually no more than an obligation of propriety or expediency, or a moral obligation.” Black’s Law Dictionary (6th ed), p 1379. “Shall,” in contrast, has an unambiguously mandatory meaning, a word that “must given a compulsory meaning ... and is inconsistent with the concept of discretion.” *Id.*, 1375. Similarly, the phrase, “use all reasonable efforts,” obscures what should be a clear mandatory duty on the judge’s part to avoid potential conflicts of interest when appointing a person as a foreign language interpreter.” Compare, Code of Judicial Conduct, Canon 2 (duty to avoid appearance of impropriety); Canon 3 (duty to perform duties of office impartially).

5. Alternatives to Subsection (F)(4)

The Court recommends adoption of Alternative A for subsection (F)(4) as the best alternative to preserve the Court’s discretion to require reimbursement of the costs of providing foreign language interpreters. Compare, *People v Jackson*, 483 Mich 271, 275, 290, 769 NW2d 630 (2009) (court may require a convicted defendant to reimburse the cost of providing a government-paid attorney).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "ER Kocab", written over a horizontal line.

Elizabeth R. Kocab

cc:  
Ronald R. Ruffin  
Kelli D. Moore